

November 29, 2006

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset  
Review of the Antidumping Duty Order on Foundry Coke from the  
People's Republic of China: Final Results

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## Summary

We have analyzed the substantive response of the domestic interested parties in the sunset review of the antidumping duty order on foundry coke products ("Foundry Coke") from the People's Republic of China ("PRC").<sup>1</sup> We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping;
2. Magnitude of the dumping margin likely to prevail

## History of the Order

On July 31, 2001, the Department of Commerce ("the Department") published its final determination in the investigation of Foundry Coke from the PRC. See Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China 66 FR 39487 (July 31, 2001) ("Final Determination") and accompanying Issues and Decision Memorandum ("Investigation Final Memo").<sup>2</sup> Following an affirmative injury determination by

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<sup>1</sup> The domestic parties in this sunset review are Petitioners for the Order on Foundry Coke, comprising ABC Coke, Citizens Gas & Coke Utility, Erie Coke Corporation, Sloss Industries Corporation, and Tonawanda Coke Corporation (collectively, "Petitioners").

<sup>2</sup> On August 31, 2001, the Department published its amended final determination. See Notice of Amended Final Determination of Sales at Less Than Fair Value: Foundry Coke From the People's Republic of China 66 FR 45962 (August 31, 2001) ("Amended Investigation Final").

the International Trade Commission (“ITC”), the Department issued an antidumping duty order on Foundry Coke. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Foundry Coke Products From The People’s Republic of China, 66 FR 48025 (September 17, 2001) (“Order”). In the Order, the calculated margins were revised as follows: for Shanxi Dajin International (Group) Co. Ltd. (“Shanxi”), 101.62 percent; for Sinochem International Co., Ltd., 105.91 percent; for Minmetals Townlord Technology Co. Ltd., 75.58 percent; for CITIC Trading Company Ltd. (“CITIC”), 48.55 percent; and a PRC-Wide Rate of 214.89 percent.

There has been one administrative review since the issuance of the Order.<sup>3</sup>

The Department has issued one conclusive scope ruling regarding the merchandise covered by the Order. On February 18, 2003, the Department found that the particular foundry coke as defined by Shanxi and imported by Shook Group LLC and Dajin U.S. Trading, Inc.<sup>4</sup>, is within the scope of the Order. See Notice of Scope Rulings and Anticircumvention Inquiries, 68 FR 7772, 7773-74 (February 18, 2003); see also Memorandum from Edward C. Yang to Joseph Spetrini, Deputy Assistant Secretary: Final Scope Ruling on the Antidumping Duty Order on Foundry Coke from the People’s Republic of China; Shook Group LLC and Dajin U.S. Trading, Inc., dated May 31, 2002.<sup>5</sup> The only entries of Foundry Coke, as entered and recorded by CBP,

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<sup>3</sup> On September 30, 2002, the Department received a request from Petitioners, requesting an administrative review of CITIC, in accordance with 19 CFR 351.213(b). The Department initiated the review of CITIC on October 24, 2002. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 67 FR 65336 (October 24, 2002). CITIC was the only company under review. Throughout the course of the administrative review, the Department made several attempts to obtain factor of production (“FOP”) information from CITIC and its suppliers. However, CITIC failed to provide a response to the Department’s Section D questionnaire, despite the Department’s repeated attempts to obtain the FOP data, from which a dumping margin is calculated. As a result, because CITIC and its suppliers failed to act to the best of their ability, the Department found that a finding of adverse facts available (“AFA”) was warranted with respect to CITIC and its suppliers in that review. See Notice of Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People’s Republic of China, 68 FR 57869 (October 7, 2003) (“Foundry Coke Review Prelim”). Furthermore, there were no changes from the Foundry Coke Review Prelim with respect to the application of AFA to CITIC. Therefore, for the final results, the Department applied the PRC-Wide rate to CITIC’s sales of Foundry Coke at 214.89 percent. See Final Results of Antidumping Administrative Review: Foundry Coke From the People’s Republic of China, 69 FR 4108 (January 28, 2004) (“Foundry Coke Review Final”).

<sup>4</sup> Shook and Dajin did not challenge that above 100 mm coke should be considered foundry coke. Rather, Shook and Dajin challenged the application of an industry standard test, and whether the 50 percent condition of the test applied to the entire shipment or a portion of the shipment which was sold as being over 100 mm. We found that this issue was clearly addressed in the investigation at the Final Determination, wherein, it was determined that the 50 percent condition applied only to that portion of the shipment sold as larger than 100 mm coke, and if at least 50 percent of such coke was retained on a 100 mm sieve, such coke is within the scope of the order. We found that this conclusion was consistent with the scope of the investigation and the order, as defined in the petition, as well as the Department’s and the ITC’s determinations.

<sup>5</sup> The scope of the subject merchandise covered by the Order, is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4 inch) sieve, of a kind used in foundries. The foundry coke products subject to this investigation were classifiable under subheading 2704.00.00.10 (as of January 1, 2000) and are currently classifiable under subheading 2704.00.00.11 (as of July 1, 2000) of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for

were categorized under HTSUS 2704.00.0011.

Finally, the Court of International Trade (“CIT”) ordered a remand in the case of CITIC Trading Company, Ltd. v. United States, CIT Court No. 01-00901, Slip Op. 03-23, (March 27, 2003). On June 17, 2003, the Department filed its Final Results of Redetermination Pursuant to Court Remand (“Remand Results”). However, without ruling on the Remand Results, on June 7, 2004, the CIT granted CITIC’s motion to dismiss its appeal with prejudice.

## **Background**

On August 1, 2006, the Department initiated a sunset review of the Order on Foundry Coke pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year Sunset Reviews, 71 FR 43443 (August 1, 2006). On August 15, 2006, Petitioners in the above-referenced proceeding notified the Department that they intend to participate in this sunset review. On August 28, 2006, the Department received an adequate substantive response from the domestic parties. The Department did not receive a substantive response from any respondent party. On September 14, 2006, the Department issued its adequacy determination in this review, finding that the Department did not receive a substantive response from any respondent interested party. Based on the lack of adequate responses from respondent parties, the Department is conducting an expedited sunset review consistent with section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations. See, e.g., Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516, 13523 (March 20, 1998). See also Memorandum from Irene Gorelik, Case Analyst to James C. Doyle, Director, Office 9, Import Administration through Alex Villanueva, Program Manager, Office 9, Import Administration; Adequacy Determination: Sunset Review of the Antidumping Duty Order on Foundry Coke from the People’s Republic of China, dated September 14, 2006.

Our analysis of domestic interested parties’ comments submitted in the substantive responses is set forth in the “Discussion of the Issues” section below.

## **Discussion of the Issues**

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the Order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the Order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the Order were revoked.

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convenience and U.S. Customs and Border Protection (“CBP”) purposes, our written description of the scope of this investigation is dispositive.

1. *Likelihood of Continuation or Recurrence of Dumping*

Interested Party Comments

Petitioners maintain that the Department should find that revocation of the Order would lead to the continuation of sales at less than fair value by margins equivalent to or greater than those found in the original investigation. Petitioners state that upon the issuance of the Order on Foundry Coke, measures were instituted against Chinese producers and exporters of Foundry Coke. Petitioners stated that U.S. imports of Foundry Coke were 119,649 metric tons and 146,785 metric tons in 1999 and 2000, respectively. Petitioners argue that the Order caused U.S. imports of Foundry Coke from the PRC to drop dramatically to 4,087 tons in 2001, 9,900 tons in 2002, and 0 between 2003 and 2005, respectively.

Petitioners also note that there has only been one administrative review of the Order on Foundry Coke covering the period of March 8, 2001, through August 31, 2002. The resulting margin for the first administrative review was 214.89% applied to CITIC. See Foundry Coke Review Final.

Petitioners argue that the antidumping duties assessed on Foundry Coke continue to protect the domestic industry from dumping. Furthermore, Petitioners note that pursuant to the Sunset Policy Bulletin, the facts of this case fall under a scenario in which dumping is likely to recur without the continued protection of the Order.<sup>6</sup> Petitioners suggest that the decrease in imports of the subject merchandise from the PRC to the United States indicates that a strong likelihood exists for the continuation or recurrence of dumping should the Order be revoked. Petitioners state that the effect of recurred dumping would injure the domestic industry and request that the Order not be revoked.

**Department's Position**

It is the Department's practice to make determinations of likelihood of dumping on an order-wide basis. In addition, the Department normally will determine that revocation of an antidumping order or termination of a suspended dumping investigation is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order or the suspension agreement, as applicable, (b) imports of the subject merchandise ceased after issuance of the order or the suspension agreement, as applicable, or (c) dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, and import volumes for the subject merchandise declined significantly.

If companies continue to sell at less than fair value with the discipline of an order in place, it is the Department's practice that it may reasonably infer that dumping would continue if the discipline of the Order were removed.

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<sup>6</sup> See Department of Commerce Policy Bulletin 98:3, Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping Duty and Countervailing Orders, 63 FR 18871, 18872 (April 16, 1998) ("Sunset Policy Bulletin").

Using statistics provided by the ITC Dataweb, the Department finds that imports of Foundry Coke from the PRC declined significantly after the issuance of the order in 2001, followed by a slight increase in imports in 2002. See Attachment 1. However, since 2003 through the present time, the import statistics indicate that no imports of Foundry Coke from the PRC have entered the United States.

As detailed within Attachment I of this document, imports of Foundry Coke from the PRC significantly decreased and subsequently ceased entirely after the issuance of the Order. Consistent with section 752(c)(1)(B) of the Act, the Department also considers the volume of imports of the subject merchandise before and after issuance of the order. When comparing the import levels before and after the issuance of the Order, the data indicate a significant decline and subsequent cessation of import volumes.<sup>7</sup> The domestic interested parties argue that revocation of the Order would likely lead to continuation or recurrence of dumping. They base their conclusion on the combined facts that import volumes decreased significantly after the issuance of the order followed by the complete cessation of imports in subsequent years.

The Department notes that if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.

The facts of this case show that (a) imports of Foundry Coke from the PRC significantly declined and, (b) subsequently ceased entirely after the issuance of the Order. Accordingly, we find that there is a likelihood that dumping would continue upon revocation of the Order.

The Department has previously determined that likelihood of dumping would continue upon revocation of the Order as evidenced by either above de minimis cash deposit rates, decline in imports, or a cessation of imports. See, e.g., Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Argentina, Brazil and Germany: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 59079 (October 6, 2006) and accompanying Issues and Decision Memorandum at “Issue 1” (where “on the basis of above *de minimis* cash deposit rates and significantly decreased import volumes for certain years, the Department determines that dumping is likely to continue or recur if the order on seamless line pipe from Brazil is revoked”).

Import statistics provided by Petitioners on subject imports between 2001 and 2006, and confirmed through the Department’s examination of import volumes obtained from ITC’s dataweb, demonstrate that following the issuance of the Order, imports of Foundry Coke from the PRC decreased significantly, then ceased altogether. Current import data continue to show a cessation of subject imports compared to pre-order quantities. Based on the data on the record,

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<sup>7</sup> The Department notes that the data used to compare pre-Order and post-Order import levels for HTSUS 2704.00.0011 and 2704.00.0010 are the current data available from ITC’s dataweb.

the Department finds that imports decreased after the issuance of the Order, then ceased entirely. Therefore, given (1) that import volumes dramatically declined and, subsequently, ceased after the issuance of the order, (2) that respondent interested parties waived their right to participate in this review, and (3) the absence of argument and evidence to the contrary, we find that dumping is likely to continue or recur if the order were revoked.

## 2. *Magnitude of the Dumping Margin Likely to Prevail*

### Interested Party Comments

Petitioners also state that, pursuant to the Sunset Policy Bulletin, in selecting margins to be provided to the ITC in conducting the sunset review, the Department's policy is to provide the ITC the margin that was determined in the final determination of the original investigation. As a result, Petitioners argue that the Department should find that the magnitude of the dumping margin likely to recur is identical to the margins determined in the original investigation.

Petitioners recommend the Department report to the ITC the following dumping margins:

<u>Manufacturer/Exporter</u>	<u>Calculated Dumping Margins from original investigation</u>
Shanxi Dajin International (Group) Co. Ltd.	101.62 %
Sinochem International Co., Ltd.	105.91 %
Minmetals Townlord Technology Co. Ltd.	75.58 %
CITIC Trading Company, Ltd.	48.55 %
PRC-Wide Rate	214.89 %

### **Department's Position**

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order is revoked. Normally, the Department will provide the company-specific margin from the investigation for each company to the ITC. For companies not investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "country-wide" rate from the investigation. It is the Department's practice to select a margin from the investigation, because that is the only calculated rate that reflects the behavior of exporters, without the discipline of an order or suspension agreement in place. However, where appropriate, the Department may report to the ITC a more recently calculated margin even if the increase was a result of the application of AFA. See e.g., Barium Chloride from the People's Republic of China; Final Results of the Sunset Review of Antidumping Duty Order, 69 FR 31791, June 7, 2004 ("Barium Sunset Review") and accompanying Issues and Decision Memorandum at 8 ("Barium Sunset Memo") (where the Department referred an AFA rate to the ITC because the petitioners supplied updated information demonstrating that costs and prices in the industry had changed, and the existing AFA margin was no longer sufficiently adverse to induce cooperation from respondents).

In the instant proceeding, the Department agrees with Petitioners that the margins calculated in the original investigation are probative of the behavior of the PRC producers/exporters if the Order were to be revoked as they are the only margins which reflect behavior absent the discipline of the Order. Based on the fact that the above-cited dumping margins from the original investigation are the only calculated rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place, the Department agrees with Petitioners that the margins noted above can be appropriately referred to the ITC.

Unlike the case in the Barium Sunset Review, the AFA rate applied to CITIC in the first administrative review was unrelated to any changes in price or costs in the industry. Rather, the Department applied an AFA rate to CITIC due to its failure to act to the best of its ability in providing its suppliers' FOP data to the Department during the course of the review. Thus, CITIC's AFA rate was not indicative of any changes in price or costs in the industry. Moreover, there is no evidence on the record of the first administrative review or this sunset review with respect to changes in the prices or costs within the industry that render the AFA rate no longer adverse or of more probative value than the calculated margins from the underlying investigation.

As such, the Department will report to the ITC the appropriate individual company rates and the PRC-wide rate from the original investigation as contained in the "Final Results of Review" section below.

### **Final Results of Review**

For the reasons stated above, we determine that revocation of the Order on Foundry Coke from the PRC would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Margin (Percent)
Shanxi Dajin International (Group) Co., Ltd.	101.62 percent
Sinochem International Co., Ltd.	105.91 percent
Minmetals Townlord Technology Co., Ltd.	75.58 percent
CITIC Trading Company, Ltd.	48.55 percent
PRC-Wide Rate	214.89 percent

## Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date



## ATTACHMENT 1

**FOUNDRY COKE FROM THE PEOPLE'S REPUBLIC OF CHINA**  
**IMPORT DATA BY QUANTITY (Metric Tons) AND CUSTOMS VALUE (USD)\*\***

Pre-Order import data

	1999		2000	
HTS Number	Quantity	Value	Quantity	Value
2704.00.0011	0	0	22,632	1,941,988
2704.00.0010	0	0	34,836	2,249,852
<b>Total</b>	<b>0</b>	<b>0</b>	<b>57,468</b>	<b>4,191,840</b>

Post-Order import data

	2001		2002		2003		2004		2005		2006 YTD	
HTS Number	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
2704.00.0011	4,087	353,380	9,900	884,860	0	0	0	0	0	0	0	0
2704.00.0010	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>4,087</b>	<b>353,380</b>	<b>9,900</b>	<b>884,860</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

\*\* Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission. Available at <http://dataweb.usitc.gov>.